

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Revision of the Commission's Rules)	CC Docket No. 94-102
To Ensure Compatibility with)	RM-8143
Enhanced 911 Emergency Calling Systems)	

DECLARATORY RULING

Adopted: December 18, 1998

Released: December 18, 1998

By the Acting Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On July 20, 1998, the State of California 9-1-1 Program Manager sent a letter to the Commission seeking an emergency declaratory ruling concerning its plans with regard to Phase I of the Commission's rules relating to Enhanced 911 (E911) service.¹ The Wireless Telecommunications Bureau (Bureau) issued a Public Notice seeking comment on the California Letter on July 30, 1998.² In response, we received twenty comments and six replies, as listed in the Appendix.

¹ Letter from L. Senitte, California 9-1-1 Program Manager to W. Kennard, Chairman, FCC, July 20, 1998 (California Letter).

² Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Request for an Emergency Declaratory Ruling Filed Regarding Wireless E911 Rulemaking Proceeding," DA 98-1504 (released July 30, 1998).

2. In this Declaratory Ruling, the Bureau responds to the issues raised in the California Letter and the comments filed with respect to the California Letter.

II. BACKGROUND

3. The advanced features of E911 service, particularly automatic location information capability, permit more rapid and effective response by public safety agencies and personnel to emergency 911 calls. In its orders in this docket,³ the Commission adopted E911 rules to promote the deployment of these features by cellular, personal communications service, and other wireless carriers.

4. Under these Commission rules, the covered wireless carriers are required to offer E911 in two phases. In Phase I, carriers must deliver the approximate location of the caller, as indicated by the location of the cell site or sector receiving the call, and a number identifying the handset that the attendant at the Public Safety Answering Point (PSAP) can call back (automatic number identification or ANI). The Commission's rules directed wireless carriers to implement Phase I as of April 1, 1998, but this obligation takes effect only when certain conditions are met, namely that the administrator of the designated PSAP has requested the service, the PSAP is capable of receiving and utilizing the E911 data, and a mechanism for recovering the costs of the service is in place.⁴

5. The California Letter indicates that the State of California has been working with wireless carriers to conduct a trial of Phase I service in the Los Angeles area. However, while the State believes it has met the conditions established by the Commission, it was able to reach agreement (at the time of the filing of the California Letter⁵) with only one of four wireless carriers for their participation in the trial. The California Letter seeks a ruling to help resolve issues that had arisen in the course of negotiations with the carriers that were preventing trials and deployment of Phase I E911. The California Letter does not argue for

³ Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (1996) (*E911 First Report and Order* and *E911 Second NPRM*). On December 1, 1997, the Commission adopted the *E911 Reconsideration Order*, which addressed petitions seeking reconsideration of the *E911 First Report and Order* and reaffirmed the Commission's commitment to the rapid implementation of technologies needed to bring emergency help to wireless callers throughout the United States. Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd 22665 (1997) (*E911 Reconsideration Order*), *further recon. pending*.

⁴ Section 20.18(f) of the Commission's Rules, 47 C.F.R. § 20.18(f).

⁵ See note 29, and accompanying text.

any particular outcome regarding the issues it raises, but requests clarification of the Commission's position so that the Phase I implementation efforts of the California 9-1-1 Program Manager can move forward.

6. The Bureau considers wireless E911 a valuable and important contribution to public safety and seeks to encourage deployment as soon as possible. Our Declaratory Ruling is intended to help clarify the Commission's rules in order to deal with the issues and problems cited in the California Letter to the extent possible. However, we should point out the limited nature of this Ruling. We are acting in this case under delegated authority to interpret and apply the rules adopted by the Commission and currently in effect.⁶ Some of the comments present requests seeking modification of those rules, requests that in some cases have been raised in pending petitions for reconsideration of the Commission's orders.⁷ Any such modifications must be addressed by the Commission and are not considered here.

III. DISCUSSION

A. Immunity from Liability

7. The first question raised in the California Letter is as follows:⁸

Do carriers have an obligation to deploy wireless E911 service (Phase I) in California despite the fact that the state statute does not provide immunity from liability for E911 service provided?

This question arises because the State of California, according to the California Letter, has a cost recovery mechanism in place to fund wireless E911 and the PSAPs are capable of receiving the data elements but, unlike many other States, California has not adopted statutory provisions supported by the wireless carriers and others that would have limited the legal liability of wireless carriers who provide E911 service.

8. In their comments, wireless carriers and public safety organizations generally recognize that the Commission has not imposed a requirement that States adopt liability immunity in some form as a condition for E911, and that the Commission has not preempted

⁶ See Sections 0.131, 0.331, and 1.2 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.2.

⁷ See BellSouth Petition for Reconsideration (filed Feb. 17, 1998); CTIA Petition for Reconsideration (filed Feb. 17, 1998).

⁸ California Letter at 2.

State tort law on this issue.⁹ The carriers primarily argue, rather, that the Commission should reconsider its earlier decision and preempt State laws, establish immunity as an additional condition for E911 obligations, or otherwise provide nationwide immunity protection for wireless carriers. Public safety organizations request that the Commission reaffirm a carrier's obligation to deploy Phase I regardless of whether a State's statutes limit the carrier's liability.¹⁰

9. The Commission's E911 rules and orders clearly impose an affirmative obligation on wireless carriers to implement Phase I without regard to whether the State affords the carrier some degree of legal immunity from liability. The Commission's rules set out a limited, specific set of conditions that must be met to trigger a carrier's E911 obligations. Those conditions do not include State adoption of a statute or other action granting any form of immunity to the carrier.

10. Moreover, the absence of such a condition was not an oversight. The issue of whether to provide immunity protection to wireless carriers for E911 service was directly raised in both the initial rulemaking proceeding and in reconsideration petitions. In both the *E911 First Report and Order* and the *E911 Reconsideration Order*, the Commission considered and specifically decided not to immunize wireless carriers from liability for 911 calls or to establish Federal guidelines for State liability limitations.¹¹ The Commission expressly stated that "covered carriers must deploy E911 service pursuant to our rules regardless of indemnification by the PSAPs."¹²

11. Although petitions seeking reconsideration of those decisions are pending, that fact does not alter the current rules,¹³ which do not require that States provide E911 liability immunity to wireless carriers in any form. Thus, the answer to the first question raised in the California Letter is, yes, wireless carriers subject to the E911 rules are obligated to deploy

⁹ See, e.g., BAM Further Comments at 1 ("The Commission has to date refused to condition the obligations of CMRS carriers to provide E911 service on carriers' ability to limit their liability."). See also BellSouth Comments at 3; AirTouch Comments at 2; AT&T Comments at 2; Ameritech Comments at 2; CCAC Comments at 2; Omnipoint Comments at 3; GTE Comments at 2-3; SBC Comments at 2; USCC Comments at 3-4; APCO Comments at 2; NENA Comments at 2; True Position Comments at 1-2.

¹⁰ APCO Comments at 2; NENA Comments at 2-3.

¹¹ See *E911 First Report and Order*, 11 FCC Rcd at 18727-28 (paras. 99-101); *E911 Reconsideration Order*, 12 FCC Rcd at 22733 (para. 139).

¹² *E911 Reconsideration Order*, 12 FCC Rcd at 22733 (para. 139).

¹³ See Section 1.429(k) of the Commission's Rules, 47 C.F.R. § 1.429(k).

E911 service despite the fact that the State statutes do not provide immunity for liability for E911 service.

B. Payment for Liability Insurance Policies

12. The second question raised by the California Letter is as follows:¹⁴

If carriers are indeed obligated to deliver Phase I service without immunity (either statutory or contractual) are we required under the cost recovery rules to reimburse carriers for the cost of insurance policies covering wireless E911 service?

According to the California Letter, three wireless carriers had not agreed to proceed with the Phase I trial. They collectively attempted to secure an insurance policy for the trial period and the initial cost estimate was \$150,000 for 90 days for all four carriers participating in the trial. The California Letter goes on to estimate that, using this cost projection, it would require at least \$50 million annually for statewide, commercial reimbursement to wireless carriers, compared with an estimated cost of \$15 million annually for wireless E911 service in California.¹⁵

13. Wireless carriers urge in their comments that if carriers are obligated to deliver Phase I service without immunity, then the Commission's rules should entitle carriers to recover the cost of purchasing insurance. They argue that purchasing insurance is no different from purchasing trunks, switching equipment, software, and other services needed to transmit 911 calls to PSAPs, and that those costs would not be incurred except for the implementation of E911 service.¹⁶ Public safety organizations contend that the Commission made the cost recovery mechanism a matter to be determined at the State and local levels, and that liability insurance is not an essential element of providing E911 and should not be a required item in cost recovery.¹⁷ The California 9-1-1 Program Manager strongly disagrees that the full cost of

¹⁴ California Letter at 1.

¹⁵ *Id.* at 2.

¹⁶ *See, e.g.*, AirTouch Comments at 5; Ameritech Comments at 4; AT&T Comments at 4; BellSouth Comments at 6-8; CCAC Comments at 4-5; CTIA Comments at 5-7; GTE Comments at 5; Omnipoint Comments at 6; PCIA Comments at 4; USCS Comments at 7; BAM Further Comments at 4.

¹⁷ APCO Comments at 2-3; NENA Comments at 3.

liability insurance should be deemed recoverable, believing this to be an impracticable and inequitable requirement that would raise many questions.¹⁸

14. In the *E911 First Report and Order*, the Commission did not prescribe a particular E911 cost recovery methodology. The E911 rules provide that the E911 Phase I and Phase II requirements apply only when "a mechanism for recovering the costs of the service is in place."¹⁹ This requirement may be satisfied in various ways and the Commission recognized that local and State governments had already developed diverse and innovative means for E911 funding in the case of wireline service.²⁰ The Commission did not seek to specify the costs that would be included in any cost recovery mechanism.

15. In our view, this approach to E911 cost recovery does not support a conclusion that any particular cost item, such as liability insurance, must be recovered in a specific manner, such as State reimbursement. While the cost recovery mechanism must be reasonable and lawful, the Commission has not prescribed a specific mechanism or found that any specific method is barred. Rather, it has sought to give wide flexibility to State and local approaches that take into account local conditions and needs.

16. Applying this approach to the California case indicates that it is at least premature to conclude that reimbursement of liability insurance should be considered a requirement that the State must meet to satisfy the general cost recovery condition. Wireless carriers have as a matter of practice transmitted 911 calls. This was also required by statute for facilities-based cellular carriers in California.²¹ Whatever liability costs were incurred under this basic 911 system were presumably recovered by the carriers in their general rates. Our rules do require that wireless carriers forward 911 calls from non-subscribers, but this has apparently been a common practice among wireless carriers. Moreover, this is a basic 911 requirement, not an E911 feature. The cost recovery mechanism condition under the Commission's rules applies to E911 service and the features associated with Phase I and Phase II, not to basic 911.

¹⁸ California State 9-1-1 Program Manager Reply Comments at 2 (contending that requiring insurance costs to be recoverable raises questions such as: who will decide the policy scope, limits, and deductibles; what incentives would wireless carriers have to control costs and liability; and how would coverage be parsed and priced among services).

¹⁹ Section 20.18(f) of the Commission's Rules, 47 C.F.R. § 20.18(f).

²⁰ See *E911 First Report and Order*, 11 FCC Rcd at 18722 (paras. 89-90); *E911 Reconsideration Order*, 12 FCC Rcd at 22735 (paras. 145-146).

²¹ Cal. Pub. Util. Code § 2892.

17. Implementation of enhanced features will add some complexity to basic 911 service and, as some carriers contend,²² it is reasonable to suspect it might add also to the possibility of malfunction. But the extent to which this is the case and will lead to increased liability risks and costs is less clear. It may, for example, spur increased subscribership by safety-oriented customers. Even if E911 does increase the wireless carrier's liability risk, buying insurance is not necessarily the only or the best approach to the liability issue. Even in States that have not adopted liability immunity by statute, carriers can limit their liability by contract.

18. In addition, carriers themselves have proposed that their liability can be restricted by tariffs. Although the carriers have proposed the filing of Federal informational tariffs, it would appear that State informational tariffs could serve the same purpose.²³ California statutes specifically provide for cellular carrier tariffs to include provisions dealing with emergency calls.²⁴ Those tariffs have also included provisions dealing with carrier liability. For example, a State appellate court ruled shortly after the California Letter was submitted to the Commission that a wireless carrier's State tariff could and did validly limit the carrier's liability for failure to deliver a 911 call.²⁵ To the extent that a carrier can employ this or other options to legally limit its liability it may be unnecessary to obtain insurance, or incremental insurance costs for E911 may be minimal.

19. There may also be other reasonable cost recovery mechanisms that do not involve State reimbursement of liability insurance costs. Wireless carrier rates are not regulated by the States and carriers may adjust their rates to reflect their changes in costs. Some carriers might choose to self-insure. Although the Commission has not ruled directly on the matter, a reasonable cost recovery mechanism might include recovery of some or all of the costs through carrier rates, surcharges, taxes and fees, or other mechanisms. In addition, there may be reasons why a State might choose not to grant the level of liability immunity desired by the carriers, for example as an incentive for high quality 911 service.

²² AirTouch Comments at 4-5.

²³ NENA Reply Comments at 2-3.

²⁴ Cal. Pub. Util. Code § 2892. Although Section 332(c)(3) of the Communications Act preempts State regulation of entry of or rates charged by CMRS carriers, the statute reserves to the States the authority to regulate the "other terms and conditions" of CMRS. The Commission has declined to define a particular demarcation point between preempted rate regulation and retained authority over other terms and conditions. *See* In the Matter of Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain Regulatory Authority over Intrastate Cellular Service Rates, PR Docket No. 94-105, Report and Order, 10 FCC Rcd 7486, 7549 (para. 144) (1995).

²⁵ *Los Angeles Cellular Tel. v. Superior Court*, 76 Cal. Rptr. 2d 894 (Cal. 1998).

20. We are also unconvinced that the specific circumstances in California warrant a conclusion that the Commission should impose a specific liability insurance requirement. Commenters assert that a bill was introduced in the California Assembly this year that included indemnity for wireless carrier 911 services except for gross negligence or an intentional act, but that this bill was subsequently withdrawn.²⁶ Wireless carriers express concern that, absent such a statutory provision, they risk significant potential liability and even bankruptcy for failure to deliver a single 911 call.²⁷ However, as we discussed above, it appears that wireless carriers may be able to limit their liability, for example, through contracts and State tariffs, regardless of whether a State statute provides such liability limitations.

21. We also note arguments that wireless carriers seek parity with wireline local exchange carriers.²⁸ The comments do not, however, identify any California statutory provision that gives liability protection to wireline carriers but not to wireless carriers. Even if such statutory provisions were in place for wireline carriers, however, claims of parity might not be apposite because of other differences in the obligation, regulation, and operations of wireline and wireless carriers.

22. The Commission's goal of allowing States and localities to develop innovative funding mechanisms that meet local needs and conditions is likely to be ill-served by an inflexible rule that mandates one particular method of cost recovery or by any Commission attempts to intervene in State political and administrative processes. Even if it might seem a helpful way to bypass apparent deadlocks at the State or local level, in the long run such Federal intervention may undercut and discourage the hard work and careful analysis necessary to develop effective and innovative solutions. We note, for example, that since the California Letter was sent, all four subject wireless carriers have agreed to participate in the Los Angeles E911 trial and have not conditioned participation on insurance reimbursement, although the issues of liability and insurance remain for full-scale, permanent E911 operation.²⁹

23. In pointing out possible alternatives to State limitations on liability and insurance reimbursement, we do not mean to suggest that a funding mechanism may ignore significant factors that affect the additional costs that E911 may impose on wireless carriers. Overall, the

²⁶ AirTouch Comments at 2-3.

²⁷ Omnipoint Comments at 5.

²⁸ *See, e.g.*, CCAC Reply Comments at 2-3.

²⁹ CCAC Reply Comments at 1; California State 9-1-1 Program Manager Reply Comments at 4.

funding mechanism should recognize E911 costs in a reasonable and lawful way, including cost increases imposed by State and local governments.

24. To answer the second question in the California Letter more specifically, the Commission's rules and orders do not require that the State reimburse wireless carriers for the cost of insurance policies covering wireless E911 service, or prescribe or forbid any specific funding mechanism. Overall, the E911 funding mechanism should be reasonable and lawful.

C. Selective Routing

25. The third question raised by the California Letter is:³⁰

Regarding selective routing — what is meant in the Order by the reference to “appropriate PSAP”?

The selective routing question arises because California law provides that the public utility commission “shall, by rule or order, require that every facilities-based cellular service provider provide access for end users on its system to the local emergency telephone services . . . and that ‘911’ calls from cellular units shall be routed to the nearest appropriate California Highway Patrol communications center.”³¹ California also has over 400 non-Highway Patrol PSAPs.³²

26. Carriers and public safety officials support proposals to modify this statute to permit selective routing of 911 calls to other PSAPs when it appears that is the best way to serve the caller,³³ but to date this proposal has not been adopted.³⁴ For the Los Angeles trial, the California 9-1-1 Program Manager sought agreement from wireless carriers to route their calls to the PSAP judged to be appropriate, regardless of whether the PSAP was operated by the Highway Patrol.³⁵ Cellular carriers, however, would not agree to such routing, believing it was unlawful under the California statute. One of the cellular carriers participating in the

³⁰ California Letter at 1.

³¹ Cal. Pub. Util. Code § 2892.

³² AirTouch Comments at 5.

³³ California Reply Comments at 3-4.

³⁴ AirTouch Comments at 6; California Highway Patrol Comments at 1; California 9-1-1 Program Manager Reply Comments at 4.

³⁵ AirTouch Comments at 5-6.

trial, AirTouch, states that it “would be in the untenable position of violating State law and further increasing its liability exposure if it were to comply.”³⁶

27. Other carriers point out that the Commission clarified the issue of where 911 calls are to be routed in the *E911 Reconsideration Order*³⁷ and urge that State and local public safety officials are best equipped to determine how wireless 911 calls should be routed.³⁸ Some carriers also urge the Commission to encourage States to route calls for the fewest handoffs³⁹ or to permit alternative routing.⁴⁰ Similarly, public safety officials urge that 911 call routing is inherently local and a matter of State and local government choice in which the Commission should not become involved.⁴¹ The California 9-1-1 Program Manager agrees that the appropriate State or local agency should be the entity responsible for designating the appropriate PSAP, while stating that to the extent the Commission’s orders can be read to preempt State laws that are not consistent with Federal purposes, it would support that effort to remedy what it describes as a serious crisis with wireless 911 calls in California.⁴²

28. We believe, along with many of the commenters, that the Commission has already clearly addressed this issue in the *E911 Reconsideration Order*. There the Commission plainly did not seek to preempt State authority, but rather confirmed that the designation of the PSAP that should receive wireless 911 calls is a matter for State or local authorities.⁴³ Under Section 20.3 of the Commission’s Rules, the designated PSAP is defined as “[t]he Public Safety Answering Point . . . designated by the local or State entity that has the

³⁶ *Id.* 6 n.13.

³⁷ Bell Atlantic Mobile Comments at 4-5; BellSouth Comments at 8-9; CTIA Comments at 7-8; PCIA Comments at 5; USCC Comments at 8; Nextel Reply Comments at 5.

³⁸ AT&T Wireless Comments at 5; Bell Atlantic Mobile Comments at 5-6; BellSouth Comments at 9; CTIA Comments at 8.

³⁹ GTE Comments at 6.

⁴⁰ Ameritech Comments at 6.

⁴¹ APCO Comments at 3; NENA Comments at 4. NENA does suggest that if non-Federal authorities cannot resolve their differences promptly themselves, then the Commission should make itself available in a mediating capacity or should consider preemptive action. NENA Reply Comments at 6.

⁴² California State 9-1-1 Program Manager Reply Comments at 3

⁴³ *E911 Reconsideration Order*, 12 FCC Rcd at 22713-14 (paras. 98-99).

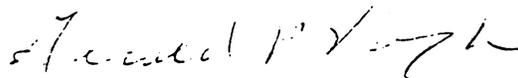
authority and responsibility to designate the PSAP to receive wireless 911 calls.”⁴⁴ In adopting this definition, the Commission stated that “we wish to clarify that the responsible local or State entity has the authority and responsibility to designate the PSAPs that are appropriate to receive wireless 911 calls.”⁴⁵ The Commission also clarified that “[u]ntil the relevant State or local governmental entities develop a routing plan for wireless 911 calls within their jurisdiction . . . covered carriers can comply with our rules by continuing to route 911 calls to their incumbent wireless PSAPs.”⁴⁶

29. While it is thus clear that the designation of the PSAP is left to the responsible State or local authorities under the Commission’s rules, we do not necessarily agree that this requires California cellular carriers to route all 911 calls to the California Highway Patrol. In its comments, the California Highway Patrol states that it has initiated agreements to delegate this responsibility to local agencies.⁴⁷ Whether this delegation is effective to transfer the authority and responsibility for wireless 911 calls to those local agencies is a matter of California law upon which we express no opinion. To the extent that this delegation or some other State or local decision or order is legally effective under California law, whether on a temporary or permanent basis, this Commission’s rules clearly do not limit the wireless 911 selective routing plans that they may establish.

IV. ACTION ON DELEGATED AUTHORITY

30. This action is taken by the Chief, Wireless Telecommunications Bureau, pursuant to authority delegated by Section 0.331 of the Commission’s Rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION



Gerald P. Vaughan
Acting Chief, Wireless Telecommunications Bureau

⁴⁴ Section 20.3 of the Commission’s Rules, 47 C.F.R. § 20.3.

⁴⁵ *E911 Reconsideration Order*, 12 FCC Rcd at 22713 (para. 98).

⁴⁶ *Id.* at 22714 (para. 99).

⁴⁷ California Highway Patrol Comments at 1.